IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7032 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMED AKBAR @ BABBAN S/O. MOHAMMED NAZIE SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7032 of 2002

MS SHAHIN KURESHI ON BEHALF OF

MR MM TIRMIZI for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/10/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu challenging the detention order

passed by the detaining authority. The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 5/5/2002 passed by the Police Commissioner, Ahmedabad City and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and learned AGP for respondents. I have also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon two offences registered against the petitioner before Madhavpura Police Station under Indian Penal Code, Bombay Police Act, Arms Act and Explosive Act and also relying upon statements of witnesses. The detaining authority has passed the detention order on 5/5/2002. The learned advocate for the petitioner has mainly argued that the petitioner has made a detailed representation to the concerned authority on 15/7/2002 which has been rejected by the concerned authority on 19/7/2002 and the petitioner detenu was accordingly informed and the petitioner detenu received the said communication through jail on 25/7/2002. The learned advocate for the petitioner tenders the copy of the communication received by the petitioner through jail. The same is ordfered to be taken on record. According to the learned advocate for the petitioner detenu, there is a delay in deciding the representation and communicating the decision of the representation, which is unconstitutional. In support of her say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported

in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 5/5/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Mohammad Nazir Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik